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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY	DOCKET NO.
09/378,233	08/19/99	PALMER	W	2068.001

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EXAMINER

DAUERMAN, S

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

12/07/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/378,233

Applicant(s)

Palmer et al.

Examiner

Sherry Dauerman

Group Art Unit

1761



☒ Responsive to communication(s) filed on (Amendment) Sep 11, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1, 2, and 9 is/are pending in the applicat

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 2, and 9 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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***Election/Restriction***

1. Claims 3-8 and 10-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5 filed on September 11, 2000.

**DETAILED ACTION**

2. The amendments to the specification and claims 1 and 9 in Paper 5, filed September 11, 2000, are acknowledged.
3. Applicant's reference to an earlier filed application is acknowledged.
4. The rejection of claim 9 under 35 U.S.C. 112, first paragraph in the last office action (paragraphs 7-8) is withdrawn.
5. The rejection of claims 1-2 under 35 U.S.C. 102 and of claim 9 under 35 U.S.C. 103 in the last office action in paragraphs 9-12 is withdrawn and a new grounds for rejection in response to the Amendment filed September 11, 2000 is as follows.

***Drawings***

6. The current layout of Table 1 does not meet the criteria for Figures as set forth in 37 CFR 1.84 (d): *Chemical or mathematical formulae, tables, and waveforms may be submitted as drawings and are subject to the same requirements as drawings. Each chemical or mathematical*

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*formula must be labeled as a separate figure, using brackets when necessary, to show that information is properly integrated. Each group of waveforms must be presented as a single figure, using a common vertical axis with time extending along the horizontal axis. Each individual waveform discussed in the specification must be identified with a separate letter designation adjacent to the vertical axis.*

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudell et al. (Pat. 5,939,983) in view of McCaslin (Pat. 4,282,681). Rudell et al. (Pat. 5,939,983) teaches a foodstuff holding device that produces different effects based upon manipulation thereof (col. 3, lines 22-25 and 46-48), said holding device comprising: a rigid housing assembly having a means for holding foodstuff (Figs. 3, 6, 14, and 20), a foodstuff member removably secured to said rigid housing (Fig. 1), output means for producing sound (Fig. 2) and/or light (Fig. 2), said output means being supported by said housing assembly (col. 5, lines 57-64), a power supply for

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energizing said output means (44)(Fig. 2), said power supply being electrically coupled to said output means (40)(42)(Fig. 2), and a control means for regulating said output means (col. 3, lines 25-29) for altering said sound and/or light of said output means by physical interaction with said foodstuff (col. 5, lines 22-31) wherein said foodstuff holding device produces changes in said sound and/or light, wherein said foodstuff is electrically conductive (col. 6, 49-53) wherein said control means includes a first electrically conductive member associated with the housing and a second electrically conductive member associated with the foodstuff (col. 6, lines 49-53), and wherein the first and second electrically conductive members adapted to be electrically connected by body portions of an individual physically in connection with both members (col. 6, lines 49-53) for the purpose of providing added interactive amusement for the end user throughout the consumption process.

Rudell et al. fails to teach wherein physical interaction with said foodstuff wherein said foodstuff holding device produces corresponding changes in said at least one of said group consisting of sound, light, movement, vibration, electrical stimulation, or odor generation.

McCaslin teaches an electronic wand for amusement which includes a handle portion (14)(Fig. 1) for gripping, wherein the handle includes a pair of conductive electrodes (50)(52)(Fig. 1)(col. 2, lines 53-61)), a power source (20) (col. 2, lines 29-31)), and wherein physical interaction with the hand gripping the handle produces corresponding changes in the light display (col. 3, lines 10-17) and/or sound (col. 3, lines 18 - col. 4, lines 3) of the amusement device (col. 4, lines 50-53), wherein changes in resistance between electrodes when bridged by a

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hand during gripping of the handle provide the changing stimulus to control the circuit means (col. 4, lines 24-29), for the purposes of providing an amusement device wherein physical interaction results in changes in the resistance between electrodes and produces a corresponding output.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the electronic circuitry of the foodstuff holding device of Rudell et al. such that the changes in resistance as a result of physical interaction with the foodstuff within said foodstuff holding device, produces corresponding changes in sound and/ or light as per the teachings of McCaslin in order to provide an interactive amusement device wherein physical interaction results in changes in the resistance between electrodes and produces a corresponding output throughout the consumption process.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rudell et al. (Pat. 5,939,983) in view of McCaslin (Pat. 4,282,681) as applied to claims 1-2 above, and further in view of Matsuyama (Pat. 4,832,652). Rudell et al. in view of McCaslin as applied to claims 1-2 above fails to teach a device wherein the output means includes the production of a shocking sensation effective to alter a taste of said foodstuff.

Matsuyama teaches that is known to one of ordinary skill in the art to produce devices associated with confectionary articles (col. 1, lines 19-21) which serve as amusement devices

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which produce a shocking sensation after coming into physical contact with an end user (col. 1, lines 13-18) for the purposes of delivering an amusing shock to the contacted user.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the foodstuff holding device of Rudell et al. such that it produces a shocking sensation which alters the taste of a foodstuff as per the teachings of McCaslin and Matsuyama in order to manufacture a foodstuff holder in combination with a foodstuff which provides interactive electrically shocking amusement throughout the consumption process.

### ***Response to Arguments***

10. Applicant's arguments filed September 11, 2000 have been fully considered but are moot based on new grounds for rejection. Therefore, responses to Applicant's Remarks will be limited to prior art issues which are relevant to the new grounds for rejection.

With respect to Applicant's remarks on page 3, paragraph 1 - page 4, paragraph 1, wherein the election of species is argued with traverse based on the inclusion of the Markush group "consisting of sound, light, movement, vibration, electrical stimulation, or odor generation", the Examiner respectfully notes that only one of the limitations contained within the group need to be taught by the prior art in order to reject the claim. In this case, the limitation of sound was previously elected and a corresponding search was completed. The addition of the expanded group, does not require additional areas of search to be included because the prior art

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which was previously searched already provided teachings sufficient to reject limitations based on both sound and light. Therefore, the prior election of species stands.

With respect to Applicant's remarks on page 5, paragraph 2 - page 6, paragraph 1, wherein it is argued that Rudell et al. '983 does not teach wherein "changes in the physical characteristics of the food stuff results in corresponding changes in sound", Applicant is reminded that arguments should be limited to claimed limitations. The current limitation has been amended such that, "physical interactions with said foodstuff holding device produces corresponding changes" (claim 1, lines 17-19).

Furthermore, the term "altering" (claim 1) is broadly interpreted to mean "to make different" (Merriam-Webster's Collegiate Dictionary, 10th Ed.). Thus the altering of sound may be broadly interpreted to include the initiation and ceasing of a sound.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Pat 5,089,745, 2/1992, Iannini

- discloses wherein changes in resistance between electrodes when bridged by a hand during gripping of the handle provide the changing stimulus to control the circuit means (col. 2, lines 54-60).

Merriam-Webster's Collegiate Dictionary, 10th Edition, principal copyright 1993.



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***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherry Dauerman at telephone number (703) 305-0883. The examiner can normally be reached on Tuesday through Thursday from 7:30 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703) 308-0756. The fax phone numbers for the organization where this application is assigned are (703) 305-3599 and (703) 305-7718.

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Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

**Sherry A. Dauerman**

**Patent Examiner**

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November 27, 2000

  
GABRIELLE BROUILLETTE  
SUPERVISORY PATENT EXAMINER  
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